



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

May 15, 2014

BY ECF & FAX

The Honorable Jesse M. Furman
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

**Re: United States v. Kenneth Garcia et al.,
S2 13 Cr. 143 (JMF)**

Dear Judge Furman:

The Government respectfully submits this letter to request a 30-day extension of the deadline to appeal the decision issued by the Court on April 21, 2014, suppressing evidence. See United States v. Garcia et al., Dkt. No. 150. Pursuant to Rule 4(b)(1)(B)(i) of the Federal Rules of Appellate Procedure, and Title 18, United States Code, Section 3731, the Government must file its notice of appeal within 30 days after the entry of the order being appealed. Accordingly, the Government's deadline to appeal is Monday, May 19, 2014.

The Federal Rules of Appellate Procedure provide that "[u]pon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." *See* Fed. R. App. P. 4(b)(4). In this case, the Government submits that it has good cause to request the 30-day extension because the decision – either to appeal or not appeal – rests with the Solicitor General's Office, which has not yet reported to this Office (and may not report before the deadline) its final determination as to whether the matter should be appealed. In the absence of an extension, this Office is required by department policy to protect the Government's appellate rights by filing a timely notice of appeal, the effect of which would be to cause the district court and the court of appeals to go to the effort of transferring the district court record and docketing the appellate case; work that would prove to have been unnecessary if the Solicitor General's Office thereafter directs this Office to withdraw the appeal. Accordingly, the Government seeks the requested extension to enable the Solicitor General's Office to complete its review and approval process without the need for such an appeal to be filed.

If the Government's request is agreeable to the Court, we have respectfully enclosed a proposed order for the Court's consideration.

Respectfully submitted,

PREET BHARARA
United States Attorney

_____/s_____
Amy Garzon/Edward Diskant
Assistant United States Attorneys
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cc: Jonathan Marvinny, Esq. (via ECF)
Florian Miedel, Esq. (via ECF)
Daniel Parker, Esq. (via ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA
:
-v.-
:
KENNETH GARCIA, et al.
:
Defendants.
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ORDER
S2 13 Cr. 143 (JMF)

WHEREAS, the Court issued a decision in the above-referenced matter on April 21, 2014, entered at Docket No. 150;

WHEREAS, the United States of America, by and through Preet Bharara, United States Attorneys, Amy Garzon and Edward Diskant, of counsel, have requested an extension of the 30-day deadline within which to file a Notice of Appeal of that decision as required by Federal Rule of Appellate Procedure 4(b)(1)(B)(i) and 18 U.S.C. § 3731;

WHEREAS, Federal Rule of Appellate Procedure 4(b)(4) provides that “[u]pon a finding of excusable neglect or good cause, the district court may before or after the time has expired, with or without motion and notice extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)”;

WHEREAS, the Government requests the extension to enable the Solicitor General to review the Court’s decision and determine whether to appeal the decision;

WHEREAS, the Court finds that the Government has demonstrated good cause to extend the time to file a notice of appeal for 30 days;

IT IS HEREBY ORDERED that the Government's deadline to file a notice of appeal is extended by 30 days, until and including June 18, 2014.

Dated: New York, New York

May __, 2014

THE HONORABLE JESSE M. FURMAN
UNITED STATES DISTRICT JUDGE